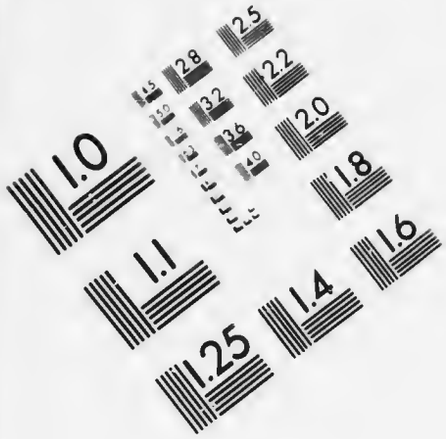

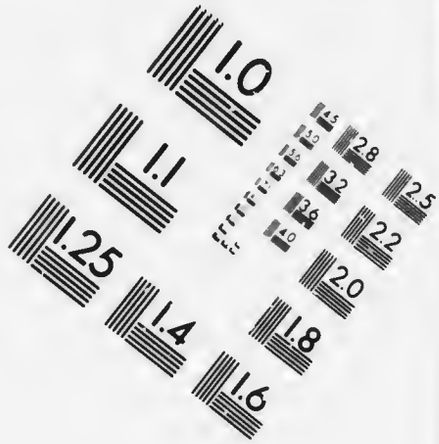

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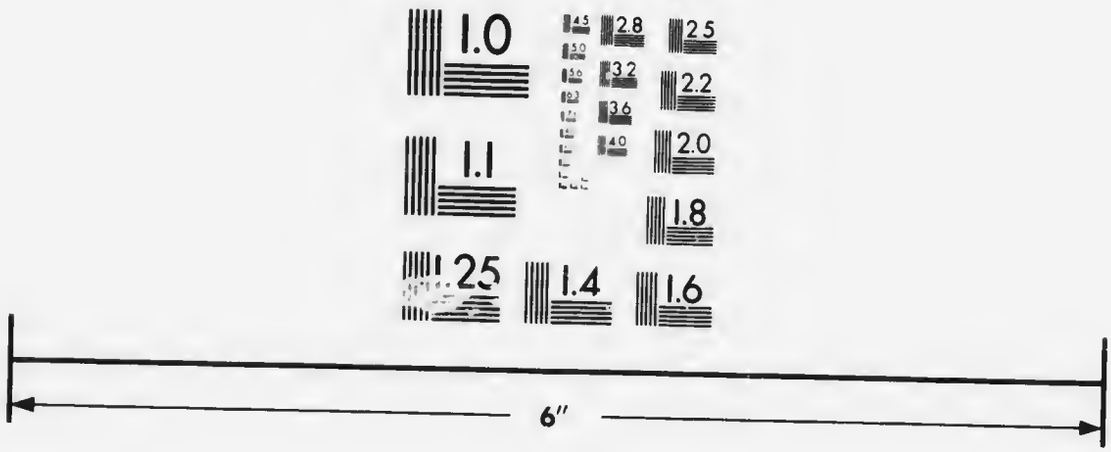

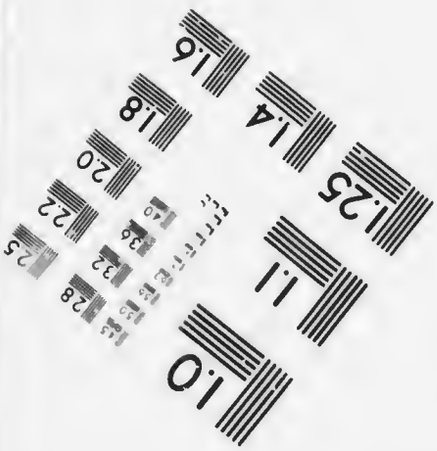

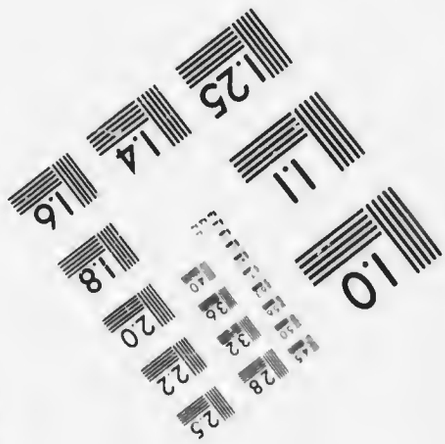

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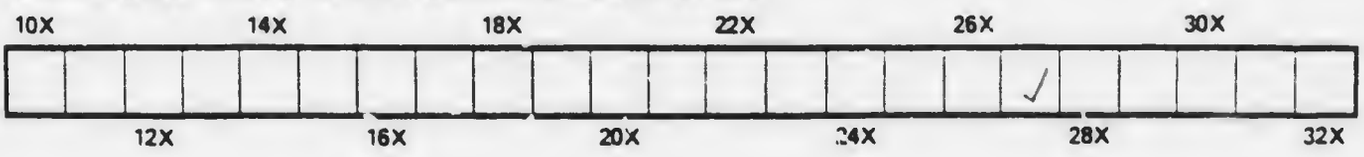

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[PRIVATE.]

MEMORANDUM.

In the Report of the Commissioners on the Ottawa Buildings, the following passage occurs at page 16:—

"Everything appears fair, open, just, but behind all is found a clandestine agreement that these "schedules shall not be applied to extra or additional work, which no one avows as his act," but which "has been carried into effect unjustly as regarded the other tenderers, and unjustly as regarded the pub-"lic interests, as the event has shown."

The charge or insinuation here made, if it means anything, is, that for some improper object, a wrongful and corrupt understanding existed, by which it was intended the contractors should profit, to the prejudice of the public interests.

It is not proposed to go beyond the Report and Evidence, ex parte and one sided as they are, to test how far this insinuation is sustained.

1st.—Did any underhand or secret understanding of any description whatever exist?

2nd.—Was the course taken and carried out in reference to the extra work, which the Commissioners insinuate was in fulfilment of this clandestine agreement, of a wrongful character, unjust to any one, unfair to the public? Or was it not such as was consistent with the constant practice of the Department, with fairness, equity and honest dealing between man and man; and was it not one which if disconnected with and not preceded by a supposed clandestine understanding, the Commissioners themselves admit was right in itself, and such as must have been followed in justice to any contractor who had obtained the work?

On what then does the proof of this clandestine understanding rest? Is it to be inferred from the circumstances, or is there direct evidence to support it? What was its motive and object? Had the then Commissioner of Public Works political or private reasons for seeking to give a preference to some contractors over others?

The Ottawa Commissioners content themselves with this insinuation; they say there has been a wrongful agreement, and though we cannot prove a corrupt motive, it is to be inferred.

The pith of the charge then is, the wrongful character of the agreement, which was, that the contractors were to be paid fair or reasonable prices for extra work, if there was any, without reference to the rates fixed in the schedules to be advanced on the contract work; and that the Public Works Commissioner had in view, or contemplated, or foresaw at the time the understanding took place, the large amount of extra work which has since been done, and intentionally omitted it from the schedule, in order that the contractors might have the benefit of it.

It would have been more satisfactory and open if the Commissioners had put the charge thus:

The Government *connived* at the lowest tender being McGreevy's; they *knew* the block sum did not cover a large portion of the work; they purposely, and for objects which could not be pure, left that unprovided for; and they have allowed the contractors excessive and unjustifiable prices for the work so *intentionally* omitted.

Is there a tittle of evidence to support the charge when thus stated, as it ought, in common fairness, to have been? The Commissioners reason thus:—We find there has been a great deal of extra work which was not provided for in the contract; the schedule of prices is declared not to apply to that extra work; it was arranged by the Department that higher rates than the schedule should be paid for it, although the words of the schedule apply to extra work; and this must have been done secretly and for a corrupt purpose, and with the view to benefit the contractors!! Such is the reasoning.

But, was the *extra* work foreseen by the Commissioner or the Department? Could it possibly (as it arose from the system of heating *afterwards* adopted) *have been foreseen?* And if it had, could the schedules (which are intended only to regulate the advances to be made on the block sum during the progress of the work) on any principles of fairness, on any usage or rule of the Department have been applied to it? And lastly: were prices allowed for this extra work which the severest and most rigorous guardian of the public interests could show to be too great, or which the Commissioners themselves venture to condemn?

If it is proved that this large amount of extra work was *not* foreseen and contemplated, the accusation of *premeditated* intention to give the contractors an advantage falls to the ground, and there

remains but the subordinate and less serious charge that there was error and miscalculation by the professional officers of the Department.

But starting from the outset, what were the precautions taken by the Commissioner to guard against complicity or unfairness in regard to the tenders, (of which the Ottawa Commissioners have taken no notice)? They wish to make out as the foundation of their insinuation that there was a preconcerted design to give McGreevy the work. But it will be seen from the following order, which the Commissioners do not deny was carried out both in its letter and spirit, that the most scrupulous and careful means were devised to prevent the possibility of favoritism:—

DEPARTMENTAL ORDER WITH REFERENCE TO TENDERS FOR PUBLIC BUILDINGS AT OTTAWA.

1st. Corresponding and Recording Clerks will both endorse each Tender as received at the office, marking the day and hour, but taking care that none of them are opened.

2nd. They will, at 12 o'clock on the 15th instant, begin to prepare a list of the several tenders, and, as soon as finished, hand that list with the tenders, to the Deputy Commissioner, who will verify and retain the same. They will also, after the delivery of the mails of the 15th instant, prepare a similar list of any further tenders that may come in.

Report, p 157. 3rd. The Deputy Commissioner will himself convey the tenders and list, to the Executive Council Chamber, and deliver the same to the Commissioner in presence of the other members of the Council.

4th. The tenders will be opened by the Commissioner in Council, and be all verified and endorsed by him, after which they will be again delivered to the Deputy Commissioner who will also verify the same, and if possible prepare an abstract statement thereof at the time.

5th. If further calculations are necessary, the Deputy Commissioner will himself verify these calculations by actual inspection of the tender, and he and the officer making the calculations will certify, on the back of each tender, the sum to which the same amounts, and also cause a properly certified schedule to be prepared with as little delay as possible, to be submitted to the Commissioner, and by him to be reported to the Council.

Quebec, 12th November, 1859. (Signed,) JOHN ROSE.

There could therefore by no possibility be any clandestine understanding in the reception of the Tenders.

It is important to remark that the tender was to *finish* the Buildings for a *block sum*, and *no further outlay was then contemplated.*

On this subject Mr. Page in his Report states, that *the extent and character of the extra work, having arisen in the adaptation of the Buildings to the system of heating and ventilating, could not have been foreseen, and "precludes the supposition that they could have been anticipated by "contractors when submitting schedules or rates for ordinary charges or extra work."*

The draft of the contract as prepared by the Department provided that the whole building should be finished for the contract sum, and "that no change, alteration or addition whatever, and no extra work
Report, p. 219. "whatever shall be done without the written authority of the Commissioner, given prior to the execution "of the work, nor will any allowance or payment whatever be made for the same in case it should be "done without such authority."

Special orders were given to the Architects and Clerk of Works to the same effect; printed forms were prepared and issued before beginning the work, and the Architects were formally directed: "You
Blue Book, p. 131. "are to keep an order-book according to the form approved of by the Commissioner, in which shall be "recorded all orders that may be given to the contractors for such changes, alterations or extra work, as "may arise or become necessary during the progress of the work, and all such orders must be sent to the "Commissioner for approval, before they are issued to the Contractors."

The Commissioners themselves, in referring to this point, report: "There never was any written
Report, p. 25. "order by any officers of the Department to excavate rock exterior to the buildings, but there was the "verbal order of the Deputy Commissioner to excavate it to a limited extent," &c. And again: "It
Report, p. 24. "was their duty (the Architects') not to have allowed any work to be done, or recognize any claims "made for it, without such written authority of the Commissioner, and yet nearly the whole of the extra "and additional work was undertaken and done, as if no such clause in the contract existed."

It may be needless to advert in detail to further evidence, to establish that the extra work which they so unfairly insinuate was in contemplation as the object of a "clandestine agreement," was wholly unforeseen by the Commissioner, and was never in the contemplation either of the Government or the Contractors, for the Commissioners themselves sum up their Report with this statement:—

Report, p. 22 and 18. "The gravest feature in the whole mismanagement was that the works connected with the heating "and ventilating system were allowed by the Deputy Commissioner *to be undertaken, proceeded with, "and paid for, without estimate being made or called for, without a contract, without any check, "any schedule of prices, or any arrangement whatever as to terms or price of work.*

"The errors made, and the superfluous work permitted to be done, arose in all the buildings from "the want of due consideration of what was really required, and of proper supervision and control, but a "large proportion of this is found in the Parliamentary Buildings.

"The Contractors cannot in justice be censured for doing as much extra and additional work as *the "imperfect plans or new requirements* of the buildings rendered necessary, for by the performance of

"these alone, at prices other than those mantioned in the schedule, could they have saved themselves "from ruin."

The great aim of the Public Works' Commissioner, from first to last, was, to adhere to the contract, and prevent claims for extra work arising or being allowed.

The Commissioners omit all notice of the numerous instances which the Records of the Department made them cognizant of, where alterations, additions, and extra works *were pressed on its notice and refused;* where applications for advances on plant and materials were rejected, &c., and in which the determination of the Public Works' Commissioner, not to transcend the contract, was shown.

He reports (June 1860) strongly against the application to substitute sandstone for the contracted limestone, "because the existing contracts and the Governor-General's residence would absorb a large "part of the appropriation, and that the balance would be insufficient to meet the extra expense which "the change of material would involve." Blue Book, p. 264.

He refuses to entertain suggestions *for extra accommodation, for iron roofing*, &c., &c., *for a residence to the Librarian*, &c., and many others, on the ground that however meritorious in themselves, neither the contract nor the appropriation warranted the outlay.

But it is said, the charge of a clandestine agreement with the Commissioner rests on the evidence of Mr. Keefer, the Deputy. It is not intended to criticize this evidence, nor is it important to consider what reason the Commissioners had for drawing such a conclusion from a fair appreciation even of his testimony, given under circumstances where his own conduct and management were so much called in question. A reference to Mr. Keefer's own acts, without comment, cannot however be avoided.

He states that the understanding with the Commissioner was "*that the extra work should be paid "for at fair prices.*"

There was nothing wrong in such understanding, even had it existed; but in saying this he refers only *to a small and inexpensive change*, viz., the *extra excavations* for the foundation, which the Commissioner had in his mind when the rates for extra work were mentioned. And even as regards this work, the evidence shews that the opinion of the Public Works' Commissioner was expressed wholly irrespective of what Mr. Keefer supposes was, or attributes to, a pre-existing understanding with the contractors on the subject.

The Commissioner meant to keep control over the quantity of extra work, by requiring a written order, signed by himself, before it was undertaken, and it was in consequence of the omission by the proper officer to bring the extra work as it progressed, under his notice, and allowing it to be done without the order, that the whole difficulty has arisen.

Whatever Mr. Keefer may now state as his impression, the following facts speak for themselves.

The four architects, the clerk of works, the deputy commissioner and Mr. Rubridge, when the first question of extra works arose, all enter on a consideration of the prices to be allowed for this extra work, *for which a written order is given at the time*, and which is limited to "excavating all the foun- "dation walls to rest on the rock," but before giving even this order, the Commissioner requires to be furnished with an Estimate in detail of *the quantity and the price at which it is estimated*. Report, p. 177.

The prices, suggested not by the contractors but by the clerk of works, the officers of the Department are not approved of and the question forms the subject of numerous official letters, the architects shewing *even their understanding as early as March* 1860, by suggesting that a schedule of prices for extra work shall be prepared by the several architects employed on the public works, to be the basis on which all extra work shall be valued. Report, p. 179.

Mr. Keefer reports this course *and recommends to the Commissioner* that it be acted on (February and March, 1860).

On the next occasion, when the price of extra work comes up, the Assistant Engineer calls Mr. Keefer's attention to it. The Commissioner was *at that time absent* and the Deputy (2nd July, 1860) puts this memorandum:—"*It was clearly understood* that contractors were not bound by the schedule "rates for the performance of extra work, although it is so expressed in the heading of the schedule.

"The heading was not corrected when it was attached to contract; they objected, but they were "told it would not govern the extra work."—S. K.

If further corroboration of Mr. Keefer's own understanding were needed, it is to be found in a second report which he made to the Commissioner on the January, 1861, when Mr. Page referred to know whether the schedules were to apply to extra work. "*In all the communications with the "contractors prior to the signing of the contracts, respecting the arrangement of the terms and "conditions to be embodied in them, it was always understood and conceded that* the schedule of "prices which had been prepared by the architects for the purpose of being attached to it and forming "the basis whereon the monthly progress estimates for contract work were to be made, should not apply "to or govern any extra work not included in the contract. Blue Book, p. 253.

"That this schedule of prices was afterwards attached to and made part of the contract, without "first striking out of the heading of it, the words 'and also for extras,' was *entirely an oversight and "a mistake, in respect of which it would be manifestly unjust for the Department to take advan-*

"*tage*. To do so when it is admitted that the prices are unremunerative, would not only be at variance "with what *is just and right*, but would be contrary to the meaning and intention of the last clause of "the contract, which covenants that 'if any additions shall entail extra expense on the contractors the "same shall be allowed them.' The contract work is to be paid for in the monthly estimates on the "basis of the schedule of prices as provided under the first clause of the 13th section of the contract. "Any extra or additional work should, *in my opinion*, be paid for at its fair value upon the estimate of "the architects, approved by the Chief Engineer of this Department."

Report, p. 182. The *extent* of the extra work is brought under the notice of the Chief Commissioner *for the first time* in a general manner by a report from Mr. Rubridge, the Assistant Engineer, dated 20th November, 1860, his examination of the *October estimates* furnishing him with the occasion of reporting upon it.

The Deputy Commissioner then proceeded to Ottawa, and in his report, dated 1st December, 1860, "he has the satisfaction of stating that the work is going on well, but that from a careful examination of "the estimate it appears to be necessary that the estimates of the architects should undergo revision," &c. "That the contract work should *be separated* from the extra work," &c.; and that as *Mr. Rubridge had drawn attention* to the *quantity of extra* work, and his inability to check it at *that distance* from the work, &c., *he should go to the spot*.

On this the Commissioner (1st December, 1860) places the following minute:—"This matter is of "so much importance that I consider it my duty to refer it for the consideration of His Excellency in "Council, with the recommendation that the Chief Engineer should proceed to Ottawa, and furnish the "Department with a comprehensive report on the whole of the operations to date"

Up to this time the then Commissioner, Mr. Rose, had given orders but for three unimportant changes, and was in ignorance that any extra work, except what those orders warranted, had been done, and from this time up to *his resignation, no other work is done or ordered*. The evidence of Mr. Page before the Committee of the Legislative Council is proof of this.

"98. Was the Department aware of the extent of these deficient works? I do not know that the "Department was aware of the extent of the works connected with the heating and ventilation, or of "the extent of the drainage required in connection with them, and for the building.

"103. Can you tell if the Commissioner knew that the extra works would be so large as they now "appear to have been when the works were let? I think he did not, inasmuch as when my report was "submitted, he expressed his surprise very much at the large amount of the increase, stating he had no "idea that the system of heating and ventilation would have cost so much. Mr. *Garth's* tender was "for $61,285. He stated that he was aware there was some brick and stone work which was not em- "braced in Mr. *Garth's* tender. I had made out my estimate at that time, and I requested Hon. Mr. "Rose, the then Commissioner, to state his opinion as to what this brick and stone work would amount "to; after some consideration he said he thought it would not exceed, in his estimation, $8,000 or "$10,000. I told him it would be nearly $360,000 exclusive of Mr. *Garth's* contract. By that, I "mean the works connected with the heating and ventilation. Mr. *Rose* then became very much excit- "ted, saying that he had not known it up to that time, neither were the Government aware of it."

What then becomes of the inference, which the Commissioners seek should be drawn, that Mr. Rose was party to an improper understanding to give the Contractors a large amount of extra work, and to pay them for it in excess of fair rates. To the last, the position which he takes is the same, for in his Report to Council on the 14th May, 1861, he states:—"The arrangements which were made in the first in- Blue Book, p. 326. "stance, ought, if carried out by the proper parties, *to have prevented any expenditure beyond the "contract sum without the authority of the Department. In no case has that direct authority been "given, except: firstly,—in regard to the facing with Nepean sandstone;* secondly,—to deepen the "excavations for the foundation; and thirdly,—to *alter the basements*. The first was done by com- "mand of Your Excellency in Council; the second Departmentally, as indispensibly necessary for the "safety of the building; and the third as an unimportant change, which would give the additional number "of rooms required, at the smallest possible expense. In the other instances, as would appear from the "Reports of the Deputy Commissioner and Engineer, the positive rule of requiring the order of the "Commissioner has been departed from by the Architects and Clerks of the works, and the undersigned "cannot advise Your Excellency *to sanction the charges without fuller investigation*. As to the "prices at which any extra work actually ordered should be paid, *the provisions of the contract and the "rates there specified, where applicable, should be adhered to.*

"He further recommends that, in the mean time, the charges made for such works as are stated to "be extra, or which have not been so ordered, be *held in abeyance and be not allowed;* but that the "payments made be considered as made on account of works generally; and that the final determination "of recognizing the works which do not fall within the category of those above mentioned as extra, shall "remain in abeyance until the contract is completed, and a final settlement made with the contractors."

Here his Departmental action and responsibility end.

At that time, as the Commissioners report, there was $527,986 of the appropriation on hand, and up to this time the progress estimates *had been regularly paid, and embraced all the work done from month to month.*

If it were necessary to superadd direct testimony contradictory of the insinuation contained in the Report, it will be found in that of McGreevy, the Contractor, *whose interest is all on the side of proving such an understanding as is pointed at!*—and yet he swears: "I never had any private "conversation with Mr. Rose or any member of the Government about it. It was between Mr. Keefer Report, p. 114. "and me that the agreement was made that the schedule of prices should not be applied to extra or "additional work, before the contract was signed. If I had noticed the heading of the schedule, I would "not have signed it." Thus then it is evident, first,—That it was never contemplated that the extra work could amount to any important sum; that on the contrary the most stringent provisions were introduced to guard against it; that the omission to foresee and provide for its performance is made one of the most serious charges against the practical officers engaged in the preparation of the plans; that the late Chief Commissioner, Mr. Rose, refused to give written orders for extra work; that he refused to recognize anything as extra which had not been so ordered; and that so far as his authority extended he would have disallowed any claim for it.

Is the inference of a clandestine agreement to be found in this state of facts?

But supposing *an understanding* to have existed. Does it merit the offensive character which the Commissioners apply to it? Has any different course been followed, or have higher prices been allowed in consequence of this alleged understanding than would have been without it, by following the ordinary rule of equity and fair dealing which all contractors were entitled to have extended to them? An unfavorable inference is sought to be drawn from the fact that no schedule was attached at first. But how can this omission or irregularity affect the good faith of either. The evidence shews that as the whole building was to be done for a block sum, the use of a schedule was only to *regulate progress estimates*, and that no matter what rates the tenderers put in to their schedules, the Department would *have altered* them to suit their own views of the rates which should be advanced. Mr. Keefer says:—

"In order to inform the Commission more fully upon this point, I have taken occasion to refer to Report, p. 126. "twelve of the leading contracts, which have been entered into for as many buildings from 1850 to 1861, "and I now put in the notes I have myself taken from the originals in the office, (Exhibit 106), giving "the names of the buildings, names of contractors, dates of contracts, and particulars regarding sche- "dules. It will be seen that only two out *of this number have schedules attached to them*, and that "one of them has two schedules attached to it, one for contract and one for extra work, the latter "being at a higher rate than the former."

"It was however designed rather for engineering than for architectural work, though applied to "both, but *the principle of paying the fair value of extra work, according to the estimate of the "officers of the Department has always been recognized and acted upon.*"

And again:—Mr. Alexander McKenzie, now Member of Parliament, and himself a tenderer, says:— Report, p. 51.

"The practice of having *schedules is not common in this Province*, but it is the almost universal "rule with the Imperial Government. I do not know the practice of the Department of Public Works. "*With ordinary buildings it is the usual practice to place the valuation of extra work in the dis- "cretion of the architects.* I say the schedule I put in with my tender represented in detail the bulk "sum of my tender, and also the prices I expected to be paid for extra and additional work."

Mr. Keefer's statement with reference to the rule of paying fair value for extra work, whether that value exceeded or fell short of the rates detailed in the schedules as applicable to contract work, is fully borne out by the terms of the contracts which have been in use for many years, viz.:—"That if Blue Book, p. 41. "any alteration or addition, either in the position or details of the works embraced in this contract or in "any of the materials therefor, shall be required by the Commissioner, the contractor will make such "change, alteration or addition, and if such change, alteration or addition *shall entail extra expense on "the contractor* either in labour or materials, *the same shall be allowed to the contractor*, or should it "be a saving to the contractor in either labour or materials, the same shall be deducted *from the "amount of this contract.*"

It is thus manifest that not only is there a total absence of proof to support the insinuation of a clandestine agreement, but it is contradicted by the whole of the evidence, and by that which is even stronger, the facts themselves.

A few words will suffice to dispose of the question whether the prices allowed *for the extra works up to June*, 1861, were *excessive*, or whether in any other respect the public interest was lost sight of in dealing with the contractors.

The prices proposed to be allowed were the result of the united deliberation *of all the architects, the Clerk of Works, Mr. Rubridge, and the Deputy Commissioner.* Mr. Page reports up to April, 1861, as the conclusion of a very elaborate investigation—

"The works generally have been executed in a substantial and satisfactory manner and *at a moderate*

" *rates*, so that although a very large proportion of them are not embraced in the contracts *the Govern-*
" *ment has received full value for the outlay*."

" It is also considered proper to state that in countries where buildings of the magnitude of those
" under consideration are comparatively numerous, experience shews that the cost of their construction
" is almost invariably largely in excess of the original estimates."

And the Ottawa Commissioners themselves declare, even taking *into account the payments made up to the period of the suspension of the works*, including any larger rates allowed after May, 1861, that " the measurements and prices allowed the Contractors in the progress estimates for the Departmental " buildings in their contract work, *and extra and additional work taken together, were in the opinion* " *of the Commissioners not remunerative*, for the amount is not in excess of the value of the work " estimated at fair prices, according to the mode of measurement, adopted by the Commission."

As regards the Parliament Buildings they say that the measurements and prices up to the final suspension *were in their opinion "remunerative,"* " for the amount is in excess of the work estimated " at fair prices according to the mode of measurement adopted by the Commissioners."

But the Commissioners do not pretend to say that the rates and prices as fixed by the Architect's Clerk of Works, Mr. Ruhridge, and Deputy Commissioner in April, 1860, and which prices were never exceeded in any payments made up to May, 1861, *were either remunerative or excessive*, and the qualified expression which they use in their Report is ample evidence that the prices have not been unreasonable. It is believed that the prices they themselves allow are greatly in excess of those fixed and paid up to May, 1861.

Have the Commissioners ventured to report adversely to the arrangements made at the outset by the then Head of the Department for preventing extra work, for checking the progress estimates on which payments should be made, for seeing that no payments were made without the certificate of the Architect, the Clerk of Works, the Assistant Engineer, the Accountant, and the Secretary or Deputy Commissioner?

Have they been able to shew that any one of those checks was in a single instance departed from; or that one dollar was paid which had not the previous approval and certificate of all these practical and responsible officers? Can they shew the slightest deviation from the rules of the Department, or any irregularity whatever in any one payment, dealing or communication on the mere direction of the Commissioner, or that in the slightest particular his authority was interposed to sanction a departure from the course which was originally laid down, and which the Commissioners themselves approve of?